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ABSTRACT

During 1987, investigations of 113 cases of alleged or suspected child labor violations at Massachusetts business establishments were conducted. Thirteen (38 percent) of these were randomly selected for review. Compliance officers in the Department of Labor's Wage and Hour Division substantiated child labor violations in 9 of the 13 cases. A total of 846 minors were found working longer hours or outside the time frames allowed under the Fair Labor Standards Act. Thirty-three minors were operating hazardous machinery, and two were under the minimum employment age of 14. Nine of the 13 cases reviewed were initiated as a result of a complaint; in six cases, the Department of Labor began its investigation within 1 month. However, response time in the other 3 complaints ranged from 4 to 16 months. The remaining four cases were directed investigations that were initiated by the Department of Labor rather than by complaint. Civil monetary penalties totaling $519,830 were assessed in nine of the cases. This was reduced to $206,730 through negotiations with employers in three of the cases, with employers paying the original amount in the other six cases. Injuries occurred to illegally employed minors in one of the five cases in which minors were found working in prohibited occupations. Twelve injuries were sustained by 11 employees, all of whom were operating meat-slicing devices. (MN)

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United States General Accounting Office

GAO

Report to the Chairman, Committee on Labor and Human Resources, U.S. Senate

ED296149

April 1988

THE FAIR LABOR STANDARDS ACT

Enforcement of Child Labor Provisions in Massachusetts

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United States
General Accounting Office
Washington, D.C. 20548

Human Resources Division

B-201792

April 28, 1988

The Honorable Edward M. Kennedy
Chairman, Committee on Labor
and Human Resources
United States Senate

Dear Mr. Chairman:

This report is in response to your request, and later discussions with your office, to provide information on the Department of Labor's enforcement of the Fair Labor Standards Act (FLSA) child labor provisions in Massachusetts. You had expressed concern over the significant increase in violations of the provisions in recent years nationwide and in Massachusetts.

Background

FLSA, which is administered by Labor's Wage and Hour Division (WHD), sets standards for minimum wage and overtime pay and contains provisions regulating the employment of child labor in agricultural and nonagricultural occupations. Under FLSA, employers must pay employees in accordance with the statutory minimum wage and overtime provisions.

The act also establishes certain standards that employers must meet when employing minors in agricultural and nonagricultural occupations. The nonagricultural standards establish the (1) minimum employment age (generally age 14); (2) hour and time restrictions under which employees under age 16 may work (for example, no more than 3 hours and no later than 7 p.m. on a school day); and (3) occupations persons under 18 may not work in (generally those involving hazardous work or equipment).

Nationwide, WHD's records show that the number of minors identified as employed in violation of FLSA rose from 8,999 in fiscal year 1983 to 19,077 in 1987, an increase of about 112 percent. In Massachusetts, reported violations increased about 614 percent, from 510 in 1983 to 3,639 in 1987.

Objectives, Scope, and Methodology

For our review, we agreed to provide information on Labor's enforcement of FLSA child labor provisions in Massachusetts.

Specifically, we reviewed

- the nature and type of child labor violations identified by WHD;
- whether WHD resolved child labor complaints through investigation as required, rather than by conciliation;[1]
- WHD's timeliness in responding to and investigating child labor complaints;
- civil money penalties assessed by WHD and paid by employers found in violation of child labor provisions; and
- the number and severity of injuries sustained by minors found working in occupations deemed hazardous by Labor under FLSA.

We also agreed to obtain information on Labor's efforts to increase employers' awareness of child labor provisions.

Our review was done from July of 1987 to December 1988, primarily at Labor's Boston Regional Office and the two WHD area offices responsible for Massachusetts cases, located in Boston, Massachusetts, and Providence, Rhode Island. We reviewed documentation and interviewed officials in each of these offices. During the 9-month period ending June 30, 1987, WHD conducted investigations of alleged or suspected child labor violations at 113 Massachusetts business establishments. We randomly selected for review a sample of 13 child labor cases, which involved investigations at 43 business establishments.[2] Our sample covered 38 percent of the 113 investigations WHD conducted. We reviewed WHD's compliance efforts from response time in handling complaints to penalty assessments when employers were found to be violating the law. Where necessary, we supplemented information obtained from the case files by interviewing the responsible area office officials.

Results in Brief

Our review of the 13 cases disclosed the following:

- WHD compliance officers substantiated child labor violations in 9 of the 13 cases. A total of 846 minors were found working longer hours or outside the time frames allowed under FLSA. WHD also found that 33

[1]Conciliations are typically initiated as a result of a complaint, involve only one employee, and generally take only a few hours to complete. Investigations may be complaint-initiated or directed by WHD. They are more detailed, take an average of 20 hours to complete, and are made at the employers' establishments, where records are reviewed, employees are interviewed, and back wages and penalties due are computed.

[2]The 13 cases included 7 with one establishment and 6 with more than one establishment.

minors were operating hazardous machinery, and 2 minors were under the minimum employment age of 14 allowed by FLSA.

- In accordance with its policy for child labor compliance actions, WHD investigated all 13 cases, including on-site visits to each establishment for review of employer records and interviews with employees. According to a report on WHD compliance actions in Massachusetts during the first 9 months of fiscal year 1987, all of the 113 child labor compliance actions were recorded as investigations.
- Nine of the 13 cases we reviewed were initiated as a result of a complaint and, in 6 of them, Labor began its investigation within 1 month. However, response time in the other 3 complaints ranged from 4 to 16 months, due, in part, to staffing problems and the low priority given the cases. The remaining 4 cases were directed investigations, initiated by Labor and not as a result of complaints.
- WHD assessed civil money penalties in the 9 cases with substantiated violations. For the 9 cases, WHD assessed penalties totaling $519,830. This was reduced to $206,730 through negotiations with the employers. One case, involving a supermarket with 17 establishments in Massachusetts and 22 in another state, paid the largest penalty, $200,000, after being assessed $511,400 initially. In 6 cases, the employer paid the amount assessed. In the remaining 3 cases, the employer negotiated a reduced penalty with Labor.
- WHD compliance officers' investigations disclosed injuries occurring to illegally employed minors in 1 of the 5 cases in which WHD identified minors under age 18 working in prohibited occupations. The investigation disclosed 12 injuries sustained by 11 employees, all of whom were operating meat-slicing devices. Four of the injuries were considered serious, requiring stitches and at least 1 day away from work.

Efforts by WHD and Labor to Improve Compliance

WHD issues an annual information release, usually in late spring, to remind employers of the child labor laws and periodically issues news releases announcing findings and settlements in major cases. The annual release is timed to coincide with the hiring of summer employees and is intended to inform employers and the public of the hour and time restrictions applicable to persons under age 16 and prohibited occupations for persons under age 18.

Labor's national office and area office officials believe that increasing their efforts beyond what they are currently doing to educate employers would not be warranted. According to the chief, Branch of Child Labor Programs in the Washington, D.C., headquarters, the significant increase in child labor violations identified in the Boston region is responsible for

a good portion of the increase in the national statistics. WHD area office and Massachusetts state officials attribute the Boston region's increases to the favorable economic conditions and the low unemployment rate in Massachusetts rather than a lack of employer awareness of the child labor employment standards.

WHD has no current plans to increase efforts to educate employers about child labor employment standards. However, the Secretary of Labor established a Child Labor Advisory Committee in August 1987, to provide advice and recommendations to assist WHD in effectively administering the child labor provisions of FLSA. The committee, which had its initial meeting in March 1988, will evaluate the child labor law, particularly applicable employment standards, some of which have not been changed since promulgated in the 1940's shortly after FLSA's enactment in 1938.

Need to Evaluate the Child Labor Employment Standards

Although the limited scope of our review precludes a formal recommendation, we identified one policy issue—Labor's assessment policy for repeated serious injuries sustained by minors working in prohibited occupations—that should be considered by the Child Labor Advisory Committee. We brought this to the attention of Department of Labor officials (see pp. 22 and 23).

As requested, we did not obtain written comments from the Department of Labor on this report. However, Labor officials were given an opportunity to review a draft of this report and their comments have been included where appropriate. Also, as arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to the Secretary of Labor and other interested parties, and make copies available to others on request.

Sincerely yours,

Janet L. Shikles

Janet L. Shikles
Associate Director

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Abbreviations

FLSA	Fair Labor Standards Act
GAO	General Accounting Office
WHD	Wage and Hour Division

The Fair Labor Standards Act: Enforcement of Child Labor Provisions in Massachusetts

Background

The Department of Labor administers the Fair Labor Standards Act (FLSA), enacted in 1938 and amended several times, for workers of firms engaged in interstate and foreign commerce. The act sets standards for minimum wage and overtime pay and requirements for record keeping. The act also contains child labor provisions that regulate the employment of persons under age 18 in agricultural and nonagricultural occupations under oppressive conditions that may be particularly dangerous or detrimental to the health and well-being of minors. Labor estimates that of nearly 73 million employees covered by FLSA, about 2.5 million are minors under age 18.

Under FLSA, employers must pay employees in accordance with the statutory minimum wage and overtime provisions. The act also established certain standards and requirements—many of which were established shortly after the enactment of FLSA in 1938—that employers must adhere to when employing minors in agricultural and nonagricultural occupations.

The nonagricultural standards established

- the minimum age for employment, generally age 14;
- hour and time restrictions under which minors may work unless enrolled in an approved special program. Minors under age 16 may work only outside school hours and no more than 3 hours on a school day, 18 hours in a school week, 8 hours on a nonschool day, or 40 hours in a nonschool week. Also, their work hours are restricted to the period from 7 a.m. to 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m.; and
- prohibited occupations that are considered hazardous or detrimental to the health and well-being of minors under age 18. Labor has established 17 prohibited occupations; most involve operating some type of potentially dangerous machinery or exposure to dangerous substances.

Labor's Wage and Hour Division (WHD), headquartered in Washington, D.C., within the Employment Standards Administration, is responsible for administering and enforcing FLSA child labor provisions. WHD's Boston Regional Office covers the New England states and, within the region, area offices located in Boston, Massachusetts, and Providence, Rhode Island are responsible for enforcement of FLSA in Massachusetts.

WHD compliance officers undertake two types of compliance actions—conciliations and investigations:

- Conciliations are typically initiated as a result of a complaint, involve only one employee, and generally take only a few hours to complete. When conducting a conciliation, the compliance officer does not visit the employer's premises or review the employer's records.
- Investigations are more detailed than conciliations and take an average of 20 hours to complete. They may be initiated by WHD as part of its annual work plan or as a result of a complaint and will include an on-site visit by a compliance officer who reviews employer records, interviews employees, and computes back wages and penalties due, as appropriate.

About 76 percent of WHD's FLSA compliance actions are initiated as a result of complaints. According to the WHD Boston area office assistant director, complaints in child labor cases often come from parents or one of the employing firm's customers, but rarely from the minor employee. Other compliance actions, called "directed investigations," are initiated by WHD. The WHD assistant regional administrator in Boston told us that in some instances, WHD identifies violations at one establishment as a result of a complaint and then investigates other establishments owned by the same company. In other instances, WHD may target a particular type of industry for investigation and, according to WHD officials, regardless of the reason for the investigation, a check of compliance with the child labor provisions is always included.

Several remedies are available against employers who violate FLSA. Using FLSA civil sanctions, Labor may (1) sue employers for back wages due employees—including minors[1] —for violation of the minimum wage and overtime requirements and an equal amount in liquidated damages on behalf of employees under section 16(c) of FLSA, (2) seek an injunction against future FLSA violations and recovery of back wages under section 17, or (3) file a combination suit under both sections.

Labor also has the authority to assess civil money penalties under the child labor provisions of FLSA. The act authorizes the Secretary of Labor to assess penalties of up to $1,000 for each violation of the child labor provisions. Employers may appeal the penalties within 15 days of the assessment to WHD. WHD refers the appeal to Labor's Chief Administrative Law Judge, who assigns it to an administrative law judge for formal hearing and final decision in the administrative process.

[1]Labor regulations require that minor employees be paid in accordance with the statutory minimum wage and overtime provisions, regardless of whether the work performed was in violation of the child labor employment standards, unless a specific exception applies.

Labor's Office of the Solicitor is responsible for initiating civil actions against employers or settling cases that are not resolved by WHD. Criminal actions may be brought against employers by the Department of Justice, on the recommendation of Labor's Solicitor, for violations of the act, including those related to child labor provisions.

Objectives, Scope, and Methodology

Based on a request from the Senate Committee on Labor and Human Resources, and later discussions with the Chairman's office, we agreed to provide information on Labor's enforcement of the FLSA child labor provisions in Massachusetts. Specifically, we reviewed

- the nature and type of child labor violations identified by WHD;
- whether WHD resolved child labor complaints through investigations, as required, rather than by conciliation;
- WHD's timeliness in responding to and investigating child labor complaints;
- civil money penalties assessed by WHD and paid by employers found in violation of child labor provisions; and
- the number and severity of injuries sustained by minors found working in occupations deemed hazardous under FLSA.

We also agreed to obtain information on Labor's efforts to increase employers' awareness of the child labor provisions.

We performed our work primarily at the Department of Labor's regional office in Boston, Massachusetts, and at the two area offices responsible for Massachusetts cases in Boston and Providence, Rhode Island. We also analyzed various reports from WHD's Washington, D.C., headquarters for fiscal years 1983 through 1987 to obtain information on child labor violations and compliance actions nationwide and in New England in particular.

To obtain a working knowledge of WHD's FLSA operating procedures, criteria, and standards for conducting compliance actions on child labor violations, we reviewed the Wage and Hour Division Field Operations Handbook and the standard forms used in documenting investigations and assessing penalties against employers. The handbook contains WHD's FLSA enforcement policies, procedures, and criteria, including investigative priorities for child labor cases and the procedures for assessing, negotiating, and collecting penalties.

For information on specific aspects of Labor's child labor enforcement activities in Massachusetts, we reviewed a sample of child labor compliance actions from WHD's latest available records at the time of our work. We obtained a report of all FLSA compliance actions closed out in the Boston and Providence area offices during the 9 months ending June 30, 1987, and identified 113 investigations involving alleged or suspected child labor violations at Massachusetts establishments. From this universe, we randomly selected 13 cases that covered investigations at 43 establishments. Our sample represented 38 percent of the 113 child labor investigations. WHD compliance investigations may cover businesses operating at a single or multiple locations. The 13 cases included 7 with one establishment and 6 with more than one.

We reviewed the area offices' investigative files on each case to assess the compliance officers' investigations and adherence to the Wage and Hour Division Field Operations Handbook's investigation policies and procedures relating to response time, the type of compliance action and violations identified, penalties assessed and paid, and any injuries sustained by illegally employed minors. Where necessary, we supplemented the information obtained from the case files by interviewing the responsible WHD area office officials.

We also interviewed officials in the Office of Program Operations and the Office of Policy, Planning and Review at WHD's Washington, D.C., headquarters; and the WHD assistant regional administrator at the Boston Regional Office, the Boston and Providence area office directors and the regional solicitor in Boston. We obtained WHD officials' comments on the reasons for the recent increase in child labor violations and Labor's efforts to educate employers on child labor employment standards. We also obtained comments on the increase in child labor violations from an official at the Massachusetts Department of Labor.

Our work was done from July 1987 to January 1988, and was performed in accordance with generally accepted government auditing standards.

FLSA Child Labor Violations Have Increased Significantly in Massachusetts

Violations of FLSA child labor provisions have increased significantly in recent years, particularly in the New England Region and the state of Massachusetts. Nationwide, WHD's records show that the number of minors identified as employed in violation of FLSA rose from 8,999 in fiscal year 1983 to 19,077 in 1987, an increase of 10,078, or about 112 percent. In Massachusetts, identified violations increased from 510 in 1983 to 3,639 in 1987—an increase of 3,129, or about 614 percent.

Table I.1 shows the number of minors WHD found employed in violation of FLSA during fiscal years 1983 through 1987 by all 10 Labor regions, in the New England Region, and in Massachusetts.

Table I.1: Minors Illegally Employed, Fiscal Years 1983-87

	1983	1984	1985	1986	1987	Increase (1983-87)
All regions	8,999	8,877	9,836	12,662	19,077	10,078
New England	944	753	1,182	1,371	6,712	5,768
Massachusetts[a]	510	370	462	840	3,639	3,129

[a]The WHD assistant regional administrator in Boston told us that WHD regional offices report work statistics by area office rather than by state and the Massachusetts figures were obtained from Boston and Providence area office reports. Since Providence also covers Rhode Island, the Massachusetts figures include some Rhode Island violations. According to the Providence area office assistant director, about 60 percent of the violations are attributable to Massachusetts cases except in fiscal year 1987, when the number is closer to 90 percent.

According to the chief, WHD Branch of Child Labor Programs in Washington, D.C., headquarters, the nationwide increases in child labor violations from 1983 to 1986 were not very significant. She said that the significant increase in 1987 was attributable primarily to the large increase in violations in New England, particularly in Massachusetts.

WHD's Boston area office and Massachusetts state labor officials generally attribute the increase in child labor violations to the favorable economic conditions and low unemployment rate in Massachusetts. According to Labor's data, the state's unemployment rate was 2.3 percent (and Boston's rate was 2.0 percent) or less than one-half of the national 5.9 percent unemployment rate at November 30, 1987. WHD officials told us that employers are unable to hire enough adults to meet labor demands and, as a result, employers are making greater use of minors, thereby increasing the potential for child labor violations.

The WHD Boston area director stated that the violations tend to be concentrated around the hour and time standards. The assistant area director told us that supermarkets and fast food chains are the predominant

employers of child labor. Typically, the business hours of these establishments extend beyond those allowed under FLSA for minors under age 16, according to WHD officials. Thus, the officials stated, when 14- and 15-year-old minors work during prohibited time periods or work more hours than allowed under the law, the employer is in violation of FLSA hour and time standards.

WHD Investigations of Potential Child Labor Violations in Massachusetts

As stated earlier, we reviewed 13 randomly selected cases, covering compliance actions at 43 establishments. Table I.2 provides a breakdown of the number of establishments associated with the cases we reviewed in Massachusetts.

Table I.2: Number of Establishments Per Case Reviewed

Cases	Establishments per case	Total establishments reviewed
7	1	7
2	2	4
1	4	4
1	5	5
1	11	6[a]
1	39	17[b]
13		**43**

[a]Only 6 of the 11 establishments investigated are in Massachusetts; the remaining 5 are in Rhode Island.

[b]Only 17 of the 39 establishments investigated are in Massachusetts; the remaining 22 are in Maine.

The Wage and Hour Field Operations Division Handbook requires compliance officers to "fully document" child labor violations, but does not provide specific instructions on how an investigation is to be conducted. According to the assistant area office directors in Boston and Providence, much is left to the discretion of the individual compliance officer. However, they stated that in most cases, the compliance officer reviews a sample of time cards within the investigation period—usually 2 years—for each minor employed at the establishment at the time of the investigation.

The compliance officer selects a judgmental sample based on allegations made in the complaints or information obtained in employee interviews, and the review usually includes an initial examination of only one or two time cards per minor. Depending on factors such as the condition of

the employer's records and the extent of violations in the initial sample, the compliance officer may expand the investigation by reviewing additional time cards or checking the work schedules of former employees.

Most Child Labor Violations Identified Involved Longer-Than-Allowed Work Periods

In our case reviews, we found that WHD did not substantiate alleged child labor violations in 4 of the 13 sample cases. In three of the four cases, the investigations disclosed no evidence of child labor violations, and in the fourth case the employer was determined exempt from FLSA. WHD substantiated the alleged child labor violations in the remaining nine cases as shown in table I.3.

Table I.3: WHD Findings in Nine Cases With Substantiated Child Labor Violations

		Violations			
Type of establishment	Number of establishments	Hour/ time	Hazardous occupations	Minors under age 14	Total
Restaurant	2	4	6	0	10
Nursing home	1	18	2	0	20
Retail variety store	4	5	0	0	5
Restaurant	1	1	0	0	1
Restaurant	1	1	0	0	1
Food service and housing operation	5	14	2	0	16
Supermarket	17	798	1	2	801
Restaurant	6	4	0	0	4
Supermarket	2	1	22	0	23
Total	**39**	**846**	**33**	**2**	**881**

In the nine cases in which WHD substantiated child labor violations, compliance officers investigated 39 business establishments and identified 881 violations affecting 880 minor employees. One minor was working in violation of the hour and time standards and was also found operating hazardous machinery. To summarize:

- WHD found that minor employees were working longer hours or outside the time frames allowed under FLSA child labor employment standards in all nine cases with substantiated violations. A total of 846 minors were working in violation of the hour and time standards.
- In five of the nine cases, WHD found that minors were employed in hazardous occupations prohibited by FLSA. WHD found 33 minors operating prohibited machinery, all of whom were operating meat slicers. Two of the 33 were also operating dough mixers.

WHD Area Offices Investigate Rather Than Conciliate Alleged Child Labor Violations

WHD's policy, as stipulated in the Wage and Hour Division Field Operations Handbook, is to have compliance officers conduct an investigation whenever there is an alleged child labor violation and preliminary review indicates that the complaint is valid. The Boston area office director told us that any complaint alleging child labor violations is investigated; none are resolved through conciliation.

According to a list of WHD compliance actions in Massachusetts during the first 9 months of fiscal year 1987, all of the 113 compliance actions at establishments with potential child labor violations were recorded as investigations. Our review of the case files for the 13 sample cases verified that WHD conducted investigations in all 13 sample cases. Nine were initiated as a result of complaints, and the remaining 4 cases were directed investigations, initiated by WHD. (See p. 17.)

Timeliness of Investigations of Child Labor Violations

WHD's goal is to maximize compliance with available resources and service all legitimate complaints in a reasonable period of time. The Wage and Hour Division Field Operations Handbook says that where feasible, complaints will be scheduled on "a worst first" basis. Compliance officers are directed to give top priority to complaints alleging potentially dangerous situations that could affect employees' safety or welfare, such as child labor hazardous occupation violations.

The handbook states that ordinarily the area offices should open an investigative case file within 10 days of receiving a complaint. However, the handbook contains no criteria specifying how soon after setting up the case file the area office is to initiate an investigation of the alleged violation. A WHD national office official told us that the length of time between receiving a complaint and initiating an investigation varies among area offices ranging from 1 to 12 months.

In the Boston area office, because of a complaint backlog, most FLSA cases are delayed 5 to 6 months before compliance officers are able to begin investigations. According to Boston and Providence area office officials, they prioritize cases based on the nature of the allegations made when the complaints are filed. The Providence area office director told us that any complaint alleging child labor violations, particularly allegations of minors working in hazardous occupations, is assigned to a compliance officer for immediate investigation. The Boston area office director told us that other high priority complaints include cases in which employee health or safety may be affected, minimum wage or

overtime violations involving employees working on government contracts, and cases in which recovery of a back wage claim may be jeopardized due to the statute of limitations.

We reviewed the response time in initiating investigations on the 13 cases in our sample. In 6 of the 9 cases initiated as a result of a complaint, the files contained evidence that the compliance officer initiated an investigation within 1 month of when the complaint was filed. However, response in the other 3 cases was delayed; investigations were not begun until 4 to 16 months after the complaints were received. Following is a discussion of the reason why the 3 investigations were delayed.

- Case with a 4-month delay: According to the Boston assistant area director, WHD gave this case low priority because the complaint involved (1) a small business operation; (2) only one minor employee, who was the son of the manager; and (3) alleged violations of the hour and time standards, rather than operation of hazardous equipment. In addition, he explained that the investigation was delayed because WHD had problems obtaining substantive evidence to validate the allegations made during two previous investigations; in those cases WHD lacked both witnesses and records showing hours worked. In the most recent investigation, the complaint was anonymous and WHD anticipated similar problems.
- Case with an 8-month delay: The Boston area office assistant director agreed the response time in this case was unusually long. He could not provide any specific reasons for the delay, but speculated that the case was given a low priority because only one minor employee was involved, the complaint alleged the employee to be the owner's son, and hour and time standards violations, and not operation of hazardous equipment, were alleged. (Under FLSA, minors employed by parents who are owners of the covered firms are exempt from certain of the child labor provisions, but may not work in hazardous occupations.) The compliance officer's investigation found no evidence of child labor violations.
- Case with a 16-month delay: In this case, the complainant alleged that he was being paid straight time wages for overtime hours worked. According to the Providence area office director, the investigation was not given a high priority because the complaint did not involve allegations of child labor violations and also appeared to involve wage payments to one individual rather than a widespread improper pay practice. Another reason given for the delayed investigation was staffing shortages; the area office director told us that, at the time, WHD did not have an experienced compliance officer available to initiate an investigation. The area office director also explained that based on the allegations made in the complaint, the complainant was needed both to

substantiate the allegations and to receive back wages found due, if any. He said that WHD sent a confirmation letter to the complainant, but it was returned because the complainant had moved without leaving a forwarding address. He added that WHD received a second complaint from a different employee and this time opened the investigation within 1-1/2 months of when the complaint was received. Our review of the WHD case file confirmed this.

Four sample cases were directed investigations initiated by WHD and not as a result of complaints. The area office targeted employers for investigation in one case because the employer had multiple prior violations and in another because the employer was under investigation for alleged FLSA child labor violations in Rhode Island. In the third case, WHD initiated an investigation after an off-duty compliance officer noticed and reported a probable minor operating a meat slicer in a supermarket.

A fourth case was initiated after WHD found minors operating hazardous equipment at a particular manufacturing facility. As a result, WHD officials directed investigations at comparable manufacturing operations, one of which was in our sample. WHD's investigations disclosed violations at three of the four targeted employers. Its investigation at the fourth employer was discontinued after WHD learned that the firm had moved to a new building that did not contain the hazardous equipment.

Civil Money Penalty Assessments

In any investigation that discloses a child labor violation, FLSA requires the Department of Labor to consider the imposition of a civil money penalty of up to $1,000 per violation. The act also requires Labor to consider such factors as the size of the business charged with violation and the gravity of the violation when determining the amount of the penalty. The regulations also state that based on the available evidence, WHD shall further determine:

"(1) Whether the evidence shows that the violation is 'de minimus' [minimal], and that the person so charged has given credible assurance of future compliance, and whether a civil penalty in the circumstances is necessary to achieve the objectives of the Act; or

"(2) Whether the evidence shows that the person so charged had no previous history of child labor violations, that the violations themselves involved no intentional or heedless exposure of any minor to any obvious hazard or detriment to health or well-being and were inadvertent, and that the person so charged has given credible assurance of future compliance, and whether a civil penalty in the circumstances is necessary to achieve the objectives of the Act."

WHD area offices are required to use the formula in the Wage and Hour Division Field Operations Handbook, which was established when the civil money penalties were enacted in 1974, to compute civil money penalty assessments. The handbook states that the formula is intended to maintain uniformity and consistency in imposing penalties. The formula assigns a monetary value to each violation, allowing for an aggregate penalty of up to $1,000 per minor found illegally employed. For example, employers are assessed $100 per minor for violations of the hour and time standards and $1,000 for each minor incurring a permanent total or partial disability or who dies because of the illegal employment. WHD's formula also provides for reduced assessments when specific criteria are met. For example, penalties are reduced by (1) 50 percent if there is no evidence of recurring or willful violations or serious injury to a minor, and (2) 20 percent if the employer has fewer than 100 employees.

If the employer takes exception to the amount assessed by the WHD area office, the handbook allows the WHD assistant regional administrator to negotiate the final penalty amount with employers. Moreover, under FLSA and Labor regulations, employers who are still dissatisfied with WHD or Labor's regional solicitor negotiations and/or the amount of the penalties assessed, may appeal the assessments to Labor's Chief Administrative Law Judge, within 15 days after receipt of the notice of penalty, and request a formal hearing.

WHD assessed and collected penalties in all nine cases in which WHD compliance officers found evidence of child labor violations. As table I.4 shows, the total penalties assessed amounted to $519,830, and the amount actually paid was $206,730. One supermarket chain was assessed $511,400 (for violations at 39 stores in two states) and paid $200,000.

Table I.4: Civil Money Penalties Assessed by WHD and Paid by Employers

Type of establishment	Number of establishments	Amount assessed	Amount paid
Nursing home	1	$1,150	$1,150
Restaurant	1	300	300
Restaurant	1	320	320
Restaurant	2	960	700
Supermarket	2	3,740	2,300
Retail variety store	4	1,000	1,000
Food services and housing operation	5	760	760
Restaurant	6	200	200
Supermarket	17	511,400[a]	200,000[a]
Total		**$519,830**	**$206,730**

[a]WHD investigated 39 stores in this case, including 17 in Massachusetts and 22 in Maine. The total civil money penalty assessed for all 39 stores was $511,400, of which $214,600 was applicable to the Massachusetts establishments. After negotiations with Department of Labor attorneys, the employer agreed to pay a lump sum $200,000 penalty.

In six of the nine cases in which Labor assessed penalties, the employer paid 100 percent of the assessment. In the remaining three cases, the employers objected to the initial assessments and negotiated reduced amounts. No cases were appealed to an administrative law judge. Table I.5 presents the results of the penalty negotiations.

Table I.5: Negotiated Civil Money Penalties

Penalty computed by compliance officer	Negotiated amount	Percentage of original computation
$960	$700	72.9
3,740	2,300	61.5
511,400	200,000	39.1

Area office case files did not contain documentation of the factors considered in negotiating reduced penalty assessments because the negotiations were conducted at the WHD regional office or by the regional solicitor's office. In general, area office officials told us that the initial penalty assessment represents a recommended amount only. They stated that Labor's primary goal is to achieve compliance with FLSA and not to maximize its penalty collections.

Due to the nature of the violations identified in two of the cases, we questioned the reduced penalty assessments and interviewed responsible WHD and regional solicitor officials to find out what factors were considered in the negotiations.

In one case involving an initial assessment of $3,740 in penalties, the employer objected to the assessment, maintaining, among other things, that WHD failed to consider that there was no prior history of violations and that "the exposure of minors to hazards was slight." However, the investigation disclosed that 23 minors were operating meat-slicing devices and 11 of them sustained a total of 12 injuries. Four of the injuries were considered serious, requiring stitches and at least 1 day away from work.

According to the assistant to the WHD assistant regional administrator, the factors considered in reducing this penalty were that (1) this was the first investigation of the employer and there was no history of violations, and (2) the employer showed evidence of good faith having contacted the Massachusetts State Department of Labor to obtain state employment regulations. In addition, the assistant told us that if only a few hundred dollars is in question and the employer has demonstrated good faith, WHD's informal policy is to agree to the reduction and obtain a commitment of future compliance. This policy allows Labor to avoid the time and costs associated with the employer appealing the assessment to Labor's Chief Administrative Law Judge.

In the case involving the $511,400 assessment, WHD initiated the investigation because the employer had a history of child labor violations. Due to the widespread nature of new violations identified early in the investigation, WHD asked the regional solicitor to obtain an injunction to restrain future violations. As the investigation progressed, however, it became evident that the employer continued to violate child labor employment standards despite the injunction. Of the 801 minors found to be illegally employed, 268 were identified after the injunction was obtained. The counsel for FLSA in the regional solicitor's office told us Labor did not consider contempt proceedings against the employer because the 268 violations occurred shortly after the injunction was obtained, within the same investigation period. However, he said that the employer was assessed additional penalties for minors found in violation after the injunction was signed.

According to the counsel for FLSA, there was no documentation on the reasons for the assessment, although the regional solicitor's office procedures require the preparation of a justification memorandum outlining the rationale for any changes in the assessment resulting from negotiations. He said the memorandum was not completed because of an oversight. He also stated there was no specific basis for the reduced

assessment. He said that Labor considered the $200,000 settlement reasonable because the (1) case involved primarily hour and time standard violations, which are considered less egregious than hazardous work violations, and (2) settlement represented the largest penalty for child labor violations Labor ever collected.

Penalties generally appeared to be assessed in accordance with the standard formula and Labor's policy, as stipulated in the Wage and Hour Division Field Operations Handbook, which is to assess only one penalty per minor. Under the policy, the penalty amounts do not vary depending on the frequency or severity of the identified violations. For example, in one case, three minor employees sustained a total of four serious injuries while operating meat-slicing devices. Although the penalty for a serious injury while engaged in illegal employment is $500, the employer was assessed $1,500 rather than $2,000. According to a compliance specialist in WHD's Child Labor Branch at Washington headquarters, Labor's policy is to assess only one injury-related penalty per minor—even if a minor sustains repeated serious injuries during the period covered by the investigation. Although WHD area officials told us that the case in question is highly unusual, it does raise the issue of WHD's policy for penalizing employers where a minor sustains multiple injuries.

Injuries Sustained by Illegally Employed Minors

WHD compliance officers' investigations disclosed injuries occurring to illegally employed minors in one of the five cases in which WHD identified minors under 18 working in prohibited occupations.

The Wage and Hour Division Field Operations Handbook classifies child labor employee injuries into three categories—permanent, serious, and nonserious. The handbook defines a "permanent" injury as one in which the employee has injuries that are total or partial, and are bodily, physiologically, or psychologically disabling. It defines a "serious" injury as one that causes the employee to miss 1 or more days of work.

As noted earlier, the compliance officers identified 12 instances of injury to 11 illegally employed minors. Of the 12, 8 were nonserious and 4 were serious. All injuries were sustained by minors operating meat-slicing devices. The 4 serious injuries were cuts requiring stitches and at least 1 day away from work.

Labor's Employer Awareness Activities Intended to Reduce Child Labor Violations

WHD issues an annual information release, usually in late spring, which reminds employers of the child labor laws. The release is timed to coincide with the hiring of summer employees and is intended to inform employers and the public of the hour and time restrictions applicable to minors under age 16 and prohibited occupations for minors under age 18. In addition, Labor periodically issues news releases announcing findings and settlements in major cases. According to the WHD assistant regional director, the region discontinued using televised public service announcements about 10 years ago.

We discussed the recent increase in child labor violations, particularly in Massachusetts, and whether it indicates a need to expand employers' awareness of FLSA child labor provisions. However, WHD regional and area office officials believe that expanding employer education activities would not be warranted because they attribute the marked increase in child labor violations to current economic conditions rather than employer ignorance of child labor employment standards. For example, the assistant area director in Providence believes that additional public awareness campaigns would have no impact on the incidence of child labor violations; he believes that the short labor supply in Massachusetts results in hiring more minors and employing them in ways that violate FLSA. The WHD assistant regional administrator agreed that most employers are aware of the child labor laws and that supplementing existing publicity is unnecessary.

Labor to Evaluate Child Labor Employment Standards

The chief of the Child Labor Branch in Washington, D.C., told us that the child labor employment standards and related issues are being evaluated at the national level. The chief stated that some of the regulations establishing these standards—particularly the hazardous orders—have remained virtually unchanged since they were promulgated in the 1940's subsequent to FLSA enactment in 1938, although there have been changes in the industries covered by the standards. In August 1987, the Secretary of Labor established a Child Labor Advisory Committee to "provide advice and recommendations to assist the WHD in effectively administering the child labor provisions of FLSA." The committee represents a broad spectrum of views, and includes individuals from child advocacy groups, employers, unions, academia, safety groups, as well as others. According to its charter, the committee will work on the development of child labor standards and policies for advancing child labor protection and safe employment conditions for young workers. The advisory committee had its initial meeting in March 1988.

The limited scope of our review precludes formal recommendations to the Secretary of Labor; however, we identified a policy issue that Labor should consider referring to the Child Labor Advisory Committee. Currently, Labor assesses firms one penalty per minor even when a minor sustains more than one serious injury when employed in a prohibited occupation. This policy appears to be contrary to Labor's overall goal of protecting minor employees and warrants review by the advisory committee.

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